

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

JOSEPH SCLAFANI, MICHAEL FEINSTEIN,
and BRET CAPPOLA,

Plaintiffs,

CAROL A. MICI, in her official capacity as
Commissioner of the Massachusetts Department
of Correction,
DOUGLAS DEMOURA, in his official capacity
as Superintendent of MCI-Cedar Junction, and
STEVE SILVA, in his official capacity as
Superintendent of MCI-Norfolk,

Defendants.

C.A. No.

PLAINTIFFS' MOTION FOR LEAVE TO FILE UNDER SEAL

Pursuant to Local Rules 5.4(g)(1)(A) and 7.2 of the United States District Court for the District of Massachusetts, Plaintiffs respectfully move for leave to file under seal and impound Exhibits 7-9 to the Declaration of Robert Frederickson III In Support Of Plaintiffs' Emergency Motion For A Temporary Restraining Order And Preliminary Injunction.

As ground for this motion, Plaintiffs state as follows:

1. The above-referenced Exhibits contain excerpts from the confidential DOC medical records of Plaintiffs Joseph Sclafani, Michael Feinstein, and Bret Cappola. These records contain Plaintiffs' personally identifiable information and sensitive medical information that is covered by 42 C.F.R. Part 2 and the HIPAA Privacy Rule, 45 C.F.R. Part 160. This Court has previously granted motions to seal medical records that were submitted at the pleading stage. *See, e.g., Unitt v. Bennett*, No. CV 17-11468-RGS, 2018 WL 1732156, at *9 (D. Mass. Apr. 10, 2018).

2. These medical records provide important support for Plaintiffs' request for emergency relief. In light of the urgency of this matter, it is necessary to include these confidential medical

records in Plaintiffs' supporting declaration for emergency relief, prior to entry of a protective order.

3. These documents are excerpts of Plaintiffs' DOC medical records, and are therefore already in Defendants' possession, but will be provided to Defendants and to Nancy White, General Counsel of the Massachusetts Department of Correction, Stephen Dietrick, Deputy General Counsel of the Massachusetts Department of Correction, Susan Terrey, General Counsel of the Executive Office of Public Safety and Security, and John Melander, Deputy General Counsel of the Executive Office of Public Safety and Security via secure file transfer.

4. Plaintiffs propose that the Order sealing the materials described above be lifted only in the instance of a further order of the Court, and that the sealed documents be kept in the clerk's nonpublic information file during any post-impoundment period.

5. Plaintiffs will hand deliver a copy of the sealed material to this Court.

WHEREFORE, Plaintiffs respectfully request that the Court allow this motion.

Dated: December 19, 2019

Respectfully submitted,

JOSEPH SCLAFANI, MICHAEL FEINSTEIN,
and BRET CAPPOLA

By their attorneys,

/s/ Robert Frederickson III
Robert Frederickson III (BBO 670111)
Marielle Sanchez (BBO 703897)
GOODWIN PROCTER LLP
100 Northern Avenue
Boston, Massachusetts 02210
Tel.: 617.570.1000
Fax: 617.523.1231
RFrederickson@goodwinlaw.com
MSanchez@goodwinlaw.com

Ira J. Levy (*Pro hac vice* pending)
Alexandra D. Valenti (*Pro hac vice* pending)
Aviv A. Zalcenstein (*Pro hac vice* pending)
Christine Armellino (*Pro hac vice* pending)
GOODWIN PROCTER LLP
The New York Times Building
620 Eight Avenue
New York, NY 10018
Tel.: 212.813.8800
Fax: 212.355.3333
ILevy@goodwinlaw.com
AValenti@goodwinlaw.com
AZalcenstein@goodwinlaw.com
CArmellino@goodwinlaw.com

Matthew R. Segal (BBO 654489)
Jessie J. Rossman (BBO 670685)
Laura McCready (BBO 703692) (*Pro hac vice*
pending)
American Civil Liberties Union
Foundation of Massachusetts, Inc.
211 Congress Street
Boston, MA 02110
Tel.: 617.482.3170
msegal@aclum.org
jrossman@aclum.org
lmccready@aclum.org

*Attorneys for Plaintiffs Joseph Sclafani, Michael
Feinstein, and Bret Cappola*

LOCAL RULE 7.1(a)(2) CERTIFICATE AND CERTIFICATE OF SERVICE

The undersigned counsel certifies pursuant to Local Rule 7.1 that Plaintiffs' counsel made a good faith effort to resolve the parties' dispute through a pre-suit demand letter, which requested assurances that for the duration of their incarceration in the custody of the Massachusetts Department of Correction, Plaintiffs Feinstein and Cappola will be provided with their buprenorphine maintenance treatment at the dosages previously prescribed by their medical providers. In the pre-suit demand letter, Plaintiffs' counsel also requested assurances that Plaintiff Sclafani would be put back onto his buprenorphine maintenance treatment, and that, for the duration of his incarceration in the custody of the Massachusetts Department of Correction, he will be provided with his buprenorphine maintenance treatment at the dosage previously prescribed by his medical provider. Neither Defendants' counsel nor their representatives provided such assurances in their response. Due to the urgent nature of the requested relief, counsel have not yet had an opportunity to meet and confer with Defendants or their counsel.

The undersigned further certifies that this document will be sent electronically to Nancy White, General Counsel of the Massachusetts Department of Correction, Stephen Dietrick, Deputy General Counsel of the Massachusetts Department of Correction, Susan Terrey, General Counsel of the Executive Office of Public Safety and Security, and John Melander, Deputy General Counsel of the Executive Office of Public Safety and Security this 19th day of December, 2019.

/s/ Robert Frederickson III
Robert Frederickson III (BBO 670111)
GOODWIN PROCTER LLP
100 Northern Avenue
Boston, MA 02210
Tel.: 617.570.1000
Fax: 617.523.1231
RFrederickson@goodwinlaw.com

*Attorney for Joseph Sclafani, Michael Feinstein,
and Bret Cappola*